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1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 22-10964-mg

4 - - - - - x

5 In the Matter of:

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7 CELSIUS NETWORK LLC,

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9 Debtor.

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12 United States Bankruptcy Court

13 One Bowling Green

14 New York, NY 10004

15

16 October 2, 2023

17 2:13 PM

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20

21 B E F O R E :

22 HON MARTIN GLENN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: JONATHAN

Page 2

1 HEARING re HYBRID CONFIRMATION HEARING.

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3 HEARING re Hybrid Hearing RE: CEL token Settlement under

4 Bankruptcy Rule 9019, if applicable.

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6 HEARING re Hybrid Hearing RE: Debtor's Amended Motion for

7 Entry of an Order Authorizing the Debtors to Redact and File

8 Under Seal Certain Confidential Information (Doc## 3644,

9 3635)

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1 P R O C E E D I N G S

2 THE COURT: All right, please be seated. Good
3 afternoon, everyone. Mr. Koenig.

4 MR. KOENIG: Good afternoon, Your Honor. Deanna,
5 could you please make my colleague Jeremy Young a cohost for
6 sharing privileges?

7 CLERK: All right, Mr. Young is a cohost.

8 MR. KOENIG: Thank you so much. For the record,
9 Chris Koenig, Kirkland & Ellis, for Celsius. Your Honor, it
10 is such a pleasure to be here at the commencement of the
11 confirmation hearing. We're here seeking confirmation of
12 our modified Chapter 11 plan that's been overwhelmingly
13 accepted by our accountholders.

14 This plan is the culmination of over a year of
15 working collaboratively with all of our stakeholders from
16 the Committee, formal ad hoc groups, regulators, and other
17 governmental parties, as well as individual accountholders.
18 Simply put, it's time to confirm the plan so that we can get
19 out of bankruptcy and promptly make distributions to our
20 accountholders and other creditors.

21 Before getting into what's next, I want to take a
22 minute to walk through how we got here because context is so
23 important. We filed a presentation at Docket No. 3630.
24 Your Honor, do you have a copy of that presentation?

25 THE COURT: It's up on the screen.

1 MR. KOENIG: Okay. Wonderful. I'm going to start
2 on Slide 4. So these cases were filed in July of 2022.
3 Today, on the eve of confirmation that has such overwhelming
4 support, it's easy to forget just how challenging the early
5 stages of the case was. We filed for Chapter 11 in the
6 midst of an industry-wide crypto winter that depressed
7 prices across the board. The pause had happened just a
8 month prior to filing.

9 State and federal regulators and other
10 governmental agencies were actively investigating Celsius'
11 prepetition business model for, among other things, alleged
12 unregistered offerings of securities, money transmitter
13 license issues, and securities fraud. That's not the way
14 that anybody draws up the playbook for a Chapter 11 case.

15 So the early days of these cases continued to be
16 difficult and uncertain. U.S. Trustee filed a motion to
17 appoint an examiner. Regulators routinely appeared at
18 hearings and told Your Honor about their concerns with our
19 business model. Accountholders filed motions trying to
20 regain access to the cryptocurrency that they deposited on
21 Celsius platform. So what did Celsius do in light of all of
22 these challenges?

23 At the direction of our independent and newly
24 appointed special committee of the board of directors, we
25 decided that the only path forward was full engagement and

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1 full transparency. We did not object to the appointment of
2 the examiner. Rather, we consented to her appointment and
3 we fully cooperated with her investigation. We provided
4 over 230,000 documents and she conducted 34 total interviews
5 with 26 current or former employees.

6 Around the same time, the special committee told
7 Mr. Mashinsky that he could either resign or be fired and he
8 resigned. We engaged with regulators and other governmental
9 agencies about their concerns regarding our business model.
10 We reached historic, consensual resolutions with each of
11 those regulators. None of the regulators are objecting to
12 the plan today, and that's because of those agreements.

13 I think that's truly remarkable, given where these
14 cases started. It seemed in the early hearings of the case,
15 there was a revolving door of regulators who wanted to make
16 sure Your Honor understood their frustrations about our lack
17 of engagement. We fixed that. We were so pleased to be
18 able to work with them to be able to fully resolve their
19 issues on the plan.

20 At Your Honor's suggestion early in the case, we
21 established email and phone lines where Celsius creditors
22 can easily write in and ask questions. We responded to well
23 over 1,000 emails to creditors during these cases. At some
24 point, we just stopped counting. Perhaps most importantly,
25 we decided to fully engage with the Committee, individual

1 creditors, and groups of creditors, to find consensus
2 wherever possible, even if it meant making very large
3 concessions in order to reach an agreement and drive the
4 cases forward.

5 The Committee is the natural statutory portal to
6 the Debtors. Their goal is to be a fiduciary for unsecured
7 creditors and to provide a check on the Debtor in
8 Possession. In most cases, the Committee is the Debtor's
9 principal adversary. At the beginning of these cases, it
10 certainly went that way. The Committee objected to many of
11 our initial motions, insisted on wide-ranging consent
12 rights, and the Committee also objected to our first
13 exclusivity motion.

14 What the early days of the case taught us was that
15 the only way to get out of bankruptcy was by truly building
16 consensus and working with all stakeholders and not fighting
17 over every last little thing. These cases are very
18 expensive and we certainly could have fought over every last
19 little thing and asked Your Honor to make rulings on every
20 legal issue, but that would've been costly, would've led to
21 delay, and also uncertainty in developing our transaction.

22 So building consensus meant that the Debtors had
23 to really embrace the Committee and the accountholders that
24 they represent and work together, and that meant making
25 significant concessions to the Committee. We agreed to a

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1 very short first extension of exclusivity with the
2 Committee, even though we thought that the facts and
3 circumstances of these cases certainly warranted a much
4 longer one.

5 We agreed to wide-ranging consent rights for the
6 Committee on cash management, security stipulation, bidding
7 procedures, and other key orders. We truly invited the
8 Committee in and gave them co-equal consent rights over key
9 decisions in the case, from the decision to announce a
10 stalking horse to picking a winner of the auction and giving
11 them broad consent rights over all of the documents
12 underlying the plan.

13 Perhaps most importantly, we agreed to turn over
14 claims and causes of action to a litigation administrator
15 that would pursue that litigation post-emergence on behalf
16 of creditors. In many Chapter 11 cases, the Debtor and the
17 Committee fight over exactly that issue, who is going to
18 bring claims and causes of action of the estate, and Your
19 Honor may have -- you know, in other cases, may have had to
20 rule on the STN standard and whether it was the Debtors or
21 the Committee that would bring those cases.

22 That did not happen here. Earlier this year, we
23 entered into a stipulation with the Committee to put those
24 claims against former insiders aside and allow the
25 Committee's designee, a litigation administrator, to pursue

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1 those claims for the benefit of accountholders. Simply put,
2 we could have fought about everything and instead, we made
3 the intentional and conscious decision to truly work with
4 the Committee and try to get out of bankruptcy.

5 These Committee members in particular have
6 dedicated an inordinate amount of their own personal time
7 and efforts to this case to try to get the best effort --
8 the best outcome for creditors. I know that there are folks
9 on social media who think it's very easy to second guess the
10 Committee members, but their dedication of their own time,
11 all of which is totally unpaid, and their fervent and honest
12 desire to get to the right answer for accountholders is
13 without question.

14 So I want to thank Mr. Colodny. I want to thank
15 his clients for being able to work so constructively with us
16 to get to this point. We simply wouldn't be here without
17 them and without being able to work so constructively with
18 them. Even though we often disagreed on key issues, we were
19 able to work together to get to resolutions that allowed us
20 to move these cases forward.

21 So, getting back to the timeline on the slide. So
22 the way that I think about these cases is really in two
23 stages. In the first stage, we needed to get the business
24 operating safely in bankruptcy, start cooperating with all
25 the different investigations, and get our new management

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1 team in place with Mr. Ferraro as our new interim CEO. And
2 we had some key legal issues that we had to resolve before
3 we could work towards actually developing a transaction to
4 get out of bankruptcy.

5 We had to have the Earn trial in trial in December
6 to resolve the dispute over who owned the cryptocurrency in
7 the Earn accounts, the Debtors or the accountholders. Given
8 how many active pro se accountholders were arguing that the
9 crypto belonged to them, there was no alternative. We had
10 to have a judicial resolution. We could not have done it
11 consensually. And we litigated with Custody and Withhold
12 about their ownership rights as well.

13 Flipping to the next slide on the developments in
14 this calendar year, January and December were probably the
15 key turning point in the cases. We litigated Earn, Custody,
16 and Withhold. We obtained the Court's ruling on the Earn
17 dispute and we got the final examiner's report. All of
18 these items shed light on key issues and frankly set the
19 framework for the rest of the cases.

20 So that moved the cases into phase two and allowed
21 us to move forward and focus on developing a transaction
22 that would maximize the value of Celsius' business so that
23 we can get out of bankruptcy. And during stage two, we kept
24 resolving issues and building consensus wherever possible.

25 In the early portion of 2023 we reached

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1 settlements with both the Custody and Withhold ad hoc groups
2 to resolve key questions about the applicability of
3 preferences and defenses for those accountholders. The
4 preference portion of that Custody and Withhold trial would
5 have been very interesting academically, but it would have
6 been expensive, risky, and would have delayed the
7 development of any transaction.

8 And so we've worked to pay out cryptocurrency to
9 those accountholders that participated in the settlements.
10 As Mr. Ferraro has regularly reported in his updates to the
11 Court, we've now distributed almost \$80 million in crypto to
12 folks that have participated in those settlements.
13 Critically, we reached a deal with Series B investors. This
14 was perhaps the most complex and challenging dispute of the
15 case.

16 Series B were seeking priority over all
17 accountholders. They said that they had the right to the
18 value of CNL and subsidiaries including mining and GK8.
19 After the Court ruled that the customers did not have
20 contractual claims against every legal entity, the Debtors
21 and the Committee advanced numerous alternative theories
22 from constructive fraudulent transfer to intercompany
23 claims, substantive consolidation, and even a class claim on
24 behalf of all accountholders.

25 Simply put, these cases would not -- we would not

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1 we standing here today if we not -- had resolved that
2 litigation. We would still be fighting with the Series B
3 holders. Because of that settlement, we're able to take the
4 value of GK8 mining and CNL, and in our view, rightly
5 distribute the value of those legal entities to
6 accountholders and other creditors under the plan instead of
7 the Series B. Can we turn to Slide 11.

8 So these settlements cleared the way for us to
9 develop and pursue a value maximizing transaction. The
10 sales and marketing process was long and involved, but it
11 was wildly successful. We started in March and we named
12 NovaWulf as a stalking horse bidder. That transaction
13 wasn't perfect, but it was a good starting point and it
14 generated real competitive tension among other bidders.

15 We got numerous additional bids. We named two
16 additional qualified bidders and we had a month long
17 auction. The auction lasted longer than any of us would
18 have liked, but it was wildly successful, as I said. We
19 generated hundreds of millions of dollars of additional
20 value for the transaction through the competitive tension of
21 the auction process and through lower fees and extra
22 contributions by Fahrenheit to the transaction.

23 And the particularly unique part of Celsius'
24 business is that we have not only liquid cryptocurrency but
25 real illiquid assets, too, most notably the mining business.

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1 Celsius' mining business is already one of the largest in
2 the country and we also have other illiquid assets too. We
3 have causes of action relating to historic relationships and
4 investments in a variety of other cryptocurrency businesses.

5 So maximizing value means not only distributing
6 the liquid cryptocurrency that we have, but ensuring that
7 accountholders can realize the full value of the illiquid
8 assets as well, the mining business in particular. Selling
9 the mining grades for the scrap that they are outside of the
10 mining company would be particularly value destructive.

11 So what we were focused on in phase two and stage
12 two of the cases was we wanted to find an excellent partner
13 with a proven track record in crypto and finance generally.
14 We found that partner in Fahrenheit who has demonstrated
15 experience in key areas of managing cryptocurrency, Bitcoin
16 mining, staking, and risk management generally. More
17 specifically U.S. Bitcoin is already one of the largest and
18 most successful Bitcoin mining operators in the country.
19 They will run Newco's mining operations.

20 Proof Group will lead Newco's staking efforts and
21 contribute intellectual property with respect to staking and
22 assist Newco in developing its own staking business. And
23 Fahrenheit is going to work to list the equity of Newco on
24 NASDAQ to provide creditors with the maximum liquidity
25 possible for the stock.

1 So we're very excited about Fahrenheit and what
2 they have to offer. We believe that they will maximize the
3 value of Newco for the benefit of the accountholders. And
4 Fahrenheit believes in the business. They have agreed to
5 invest up to \$50 million of their own money in the business,
6 right alongside accountholders. They are putting their
7 money where their mouth is.

8 So after we announced the Fahrenheit transaction
9 in late May, we worked to build additional consensus. In
10 mid-July, we met with the Earn and Borrow ad hoc groups for
11 three days in mediation before Judge Wiles. We reached an
12 agreement on the terms of amendments to the plan that would
13 gain the approval of those ad hoc groups and resolve the
14 intercreditor disputes between Earn and Borrow.

15 Once that was completed, that meant that we had
16 agreements with each ad hoc group for each of the Debtors'
17 programs: Earn, Custody, Borrow, and Withhold. And before
18 turning to the objections, I just really briefly want to
19 talk about the orderly winddown. Experience in these cases,
20 has taught us that it's important to have a backup plan. We
21 believe that the Newco plan is executable and we maximize
22 value, but we don't know exactly what the future holds.

23 We hope to be able to get out of bankruptcy by the
24 end of this year, but we thought it prudent to set up a
25 backup plan so that if we have to pivot for any reason, we

1 are ready to do so.

2 So, with that very long winded opening, that
3 brings us to today. I'm not going to go through all of
4 these slides. I don't want to go through all these slides,
5 but can we do Slide 15?

6 So these are folks that filed formal and informal
7 objections. Looked at the list of the parties that are
8 going to speak this afternoon and what's notable is how many
9 are speaking in support of the plan, and in looking at some
10 of the names, a couple of months ago, you might have thought
11 that they would have been on the other side of the ledger.

12 So we're pleased to have driven so much consensus.
13 But turning to the objectors, as we set forth in our brief,
14 we think we've resolved nearly all of the objections that
15 have been filed. We made adjustments and clarifications to
16 the release and exculpation provisions to incorporate all
17 the comments that we received from the U.S. Trustee.

18 We are now resolved with the SEC and the state
19 regulators and we also resolved many of the reservations of
20 rights and other limited objections that were filed through
21 agreed language in the modified plan or in the confirmation
22 order. So only a few objections remain. This is just an
23 opening, but I'll just briefly walk through a couple of the
24 key ones now.

25 First, there were a number of borrowers that filed

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1 letters -- retail borrowers who objected to the plan on the
2 basis that they believe their plan treatment is
3 inappropriate. They are arguing that they own the
4 cryptocurrency that was deposited to support their loan.
5 But the Borrow terms of use are very clear on this issue,
6 just as the Earn terms of use were. Celsius holds legal
7 title to those cryptocurrency assets and we can use,
8 dispose, or hypothecate those assets as Celsius sees fit.
9 The borrowers don't own the collateral, we do.

10 They are unsecured creditors. What the borrowers
11 do have is a right of setoff because they have claims
12 against Celsius for the return of the cryptocurrency they
13 deposited and Celsius has a claim against them for the
14 repayment of the loan principal. And that's exactly how the
15 Chapter 11 plan is structured. Borrowers have a right of
16 setoff.

17 And notably, this treatment was accepted by
18 borrowers in over 96 percent in dollar amount and 98 percent
19 in number. And they also have some additional rights that
20 they achieve through the mediated settlement that we reached
21 with the Borrower Ad Hoc Group. Most importantly, they have
22 the option to repay the principal balance of their loan.
23 They will receive a like amount of cryptocurrency back in
24 the amount of the principal balance.

25 Now, why that's important, Your Honor, is tax

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1 reasons, frankly. If they have a low basis in the
2 cryptocurrency they deposited, receiving a like amount back
3 is a much better tax outcome for them than if they were to
4 have those claims set off. It might be otherwise
5 economically the same, but obviously, if we can structure a
6 transaction to save taxes for our accountholders, we're
7 happy to do so.

8 We also agreed to work constructively with
9 borrowers who want to take advantage of this option but
10 might need financing. So to the extent they identify a
11 third party lender who would come in and give them financing
12 to make this principal repayment, we will cooperate to the
13 extent we can and with the lender to make sure that this
14 transaction can go through.

15 So this is all consistent with the borrower's
16 legal rights under the borrower terms of use, which means
17 that the best interest test is satisfied with respect to
18 them. For that reason, these objections by these retail
19 borrowers should be overruled.

20 Pharos objected on two discrete issues, the
21 absolute priority rule and the best interest test. On the
22 absolute priority rule, they complained the Series B holders
23 who are equity holders are receiving a distribution under
24 the plan when creditors are not being paid in full. To be
25 clear, the Series B holders -- this is only those that did

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1 not affirmatively participate in settlement that Your Honor
2 ordered earlier this year. This is just for them to receive
3 their pro rata share of the million dollars that you
4 approved.

5 Pharos says that this violates absolute priority,
6 but this Court approved settlement resolved an issue of
7 priority, too. The Series B holders argued that they were
8 ahead of creditors and the whole reason we entered into the
9 settlement was to resolve this very important issue.

10 And notably, I think Your Honor has dealt with
11 this issue at least adjacently in the Dewey and LeBoeuf
12 case. In that case, there was a settlement that was entered
13 into among the partners and some objecting party said that
14 it was a sub rosa plan and it violated absolute priority.

15 And there, you found that you can -- that a
16 absolute priority can be diverged from if there is a good
17 reason to do so. And here we think that there's a very good
18 reason to do so. It resolved another priority dispute. And
19 had we not done so, the Series B may have been entitled to
20 up to \$600 million of assets.

21 Second, they raised the best interest test. They
22 argue that the liquidation analysis to be presented doesn't
23 demonstrate that holders of general unsecured claims like
24 them are receiving under the plan as much as they would in a
25 Chapter 7 liquidation. But as part of making an argument,

1 they argue that Newco is actually completely valueless, even
2 though it's being seeded with \$450 million of liquid
3 currency, Newco will run and operate a mining business where
4 the Debtors submitted a valuation that has a midpoint value
5 of \$565 million and other liquid assets that a separate
6 valuation report valued in the hundreds of millions of
7 dollars.

8 Their objection says that we've submitted no
9 evidence, but actually, there's over \$1.2 billion of assets
10 that Newco is going to be seeded with and we've submitted
11 two separate expert reports to prove that point and we will
12 certainly submit them for cross examination this week to
13 prove the point in Court.

14 Moving on to the next point. A few individuals
15 objected to the emergence incentive plan that is embedded in
16 our chapter 11 plan. I want to acknowledge, I know that
17 executive compensation is understandably a hot button issue
18 for accountholders who were defrauded. They just want to
19 get out of bankruptcy. We do, too. But this management
20 team was not the ones that defrauded the accountholders.
21 That management team is gone. Those former insiders are
22 gone.

23 We're under new management who has been working
24 around the clock to make sure that our systems are ready to
25 make distributions of over \$2 billion of cryptocurrency

1 that's required negotiating agreements with Coinbase and
2 PayPal, coordinating with them to make sure that all the
3 distributions can go off without a hitch and preparing for
4 Celsius' own distributions of custody under the plan.
5 Celsius and the distribution agents need to make over
6 400,000 distributions of liquid cryptocurrency on the
7 effective date.

8 Accountholders will want that to be done in a very
9 short period of time, and it's only thanks to the continued
10 efforts of the company's management team that this will even
11 be possible. So as an initial matter, the plan included
12 this incentive plan as part of its terms. The plan was
13 voted on. The classes of accountholders who objected to
14 this term voted to accept the plan. It is binding on the
15 rest of the class so long as it meets best interests, which
16 it does.

17 This is a payment of up to \$2.6 million. The
18 difference between a Chapter 7 liquidation and the plan is
19 well over 100 times that amount and the payment isn't going
20 to be made by the Debtors, either. It's going to be made by
21 the post effective date Debtors and only after the plan
22 administrator verifies that the metrics have been met. That
23 was a change that we made at the suggestion of the U.S.
24 Trustee to help resolve their issues with the emergence
25 incentive plan.

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1 So we think the requirements of the Bankruptcy
2 Code for payment of executive bonuses don't even apply for
3 these reasons. But even if they apply, the evidence will
4 demonstrate that EIP easily meets those requirements. The
5 evidence will show the management team is paid well under
6 market and in fact will continue to be paid under market
7 even after the EIP is paid.

8 And the management team's contributions are far in
9 excess of their typical job duties. Frankly, we could not
10 be here without the efforts of these executives and we need
11 to make sure that we properly incentivize them so we can
12 maximize value and promptly return cryptocurrency to
13 creditors.

14 The only other significant objections on this list
15 are largely on CEL token. I believe that Mr. Colodny will
16 be covering that. It's the Committee's expert on the
17 valuation of CEL token that is really at the heart of this
18 issue. There are a few other objections that were covered
19 in the Committee's brief but not the Debtors' brief so I'll
20 defer to Mr. Colodny there as well. This is just an opening
21 statement. We filed a 150-page brief which not sure if Your
22 Honor has fully read yet.

23 THE COURT: I have now.

24 MR. KOENIG: So --

25 THE COURT: We had a hearing last week. I hadn't

1 been all the way through it, but I have now.

2 MR. KOENIG: So the brief walkthrough is required
3 in some more detail. I'm not going to belabor the point. I
4 know we have a lot of folks to speak. So unless Your Honor
5 has any questions for me, I'll conclude my remarks by saying
6 we're excited to present our case to confirm the plan.
7 We're going to work to get out of bankruptcy and make
8 distributions to our accountholders. I'll cede the lectern
9 to my colleague, Elizabeth Jones, who's going to be
10 presenting on the voting results and going to be outlining
11 the witnesses that you're going to hear from this week.

12 THE COURT: Thank you.

13 MR. KOENIG: Thank you.

14 THE COURT: Ms. Jones?

15 MS. JONES: Good afternoon, Your Honor. Elizabeth
16 Jones of Kirkland & Ellis on behalf of the Debtors. If we
17 could start now on Slide 26, which walks through the voting
18 results. The next two slides, Your Honor, demonstrate the
19 voting results that we filed in Mr. Brian Karpuk's
20 declaration at Docket No. 3560 then was subsequently amended
21 at Docket No. 3574.

22 Your Honor, as demonstrated in the voting results,
23 the plan has been overwhelmingly accepted by accountholders
24 in both number and amount. Classes 2, 4, 5, 6A, 7, 10, and
25 14 out of our 17 classes voted to accept and while Classes 8

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1 and 9 may have voted to reject the plan and we have a few
2 other deemed to reject, as my colleague, Mr. Koenig noted,
3 we can and do think that the plan should be confirmed as we
4 set forth in our papers.

5 Your Honor, if I may --

6 THE COURT: There's no one junior to those
7 rejecting classes that are receiving anything under the
8 plan?

9 MS. JONES: Not on behalf of their status as an
10 interest holder, but on behalf of the settlement in Series
11 B.

12 Your Honor, if I may also provide just a few other
13 statistics to demonstrate how successful this solicitation
14 process was. The Debtors distributed approximately 380,000
15 ballots and received approximately 80,000 in return, giving
16 us a little bit more than a 20 percent return rate. In
17 comparison to two of the recently filed crypto cases, in
18 Voyager, they had about a 5 to 6 percent return rate and in
19 BlockFi, they had approximately a 10 percent return rate.
20 Both of those had ballots returned anywhere between 35 and
21 65 thousand ballots.

22 Your Honor, what's even more impressive here is
23 that out of those 80,000 ballots that were returned, we had
24 \$3 billion worth of those claims out of approximately \$5
25 billion in claims; \$2.55 billion of that came from holders

1 in our Earn class.

2 So Your Honor, what that demonstrates here is that
3 there has been a lot of participation. We know the ballot
4 was complicated. It was not an easy check box and yet we
5 were very, very fortunate that we had 80,000 individuals
6 willing to walk through that and demonstrate their support
7 for the plan.

8 In addition, Your Honor, and a few other important
9 statistics, we had roughly only 515 parties opt out of the
10 third-party releases and we have only a little bit over
11 1,700 individuals opt out of the class claim settlement. We
12 had 30,000 proofs of claim filed, so to have only 1,700 of
13 them opt out and elect to continue pursuing that is a huge
14 success from our view.

15 So Your Honor, we would just like to conclude our
16 opening by introducing the witnesses that we will hear from
17 over the next few days in addition to Mr. Karpuk from
18 Stretto. So Your Honor, we have also filed declarations on
19 behalf of six other witnesses.

20 First, we'll have Mr. Christopher Ferraro, whose
21 declaration was filed at Docket No. 3581. He is the
22 Debtors' interim chief executive officer, the Debtors' chief
23 financial officer, and the Debtors' chief restructuring
24 officer. He will be providing evidence in support of
25 certain of the 1129 factors as well as a number of other

1 items that we address through our brief.

2 Your Honor, we will also hear from Mr. Robert
3 Compagna, who is a managing director at Alvarez & Marsal.
4 His declaration was filed today -- or was filed last week at
5 Docket No. 3582 and a supplemental declaration was filed
6 shortly before this hearing at Docket No. 3653. He will
7 also provide evidence in support of certain of the 1129
8 factors as well as the best interest test.

9 Next, Your Honor, we have Mr. Ryan Kielty, who's a
10 partner of Centerview Partners LLC. His declaration was
11 filed at Docket No. 3592. He will provide evidence in
12 support of the mining valuation. You could turn to slide --
13 perfect, than, you, 29.

14 Next, Your Honor, we have Mr. Steven Kokinos,
15 whose declaration was filed at Docket No. 3591. He is the
16 proposed chief executive officer of Newco and a member of
17 the Fahrenheit Group who was our plan -- and is our plan
18 sponsor. He will provide evidence in support of the
19 proposed Fahrenheit go forward business plan.

20 Next, Your Honor, we have Ms. Allison Hoeinghaus
21 who has filed a declaration at Docket No. 3586. She is also
22 a managing director at Alvarez & Marsal and she will provide
23 evidence in support of the Debtors' emerge incentive plan.

24 Finally, Your Honor, we have Mr. Joel Cohen who
25 filed a declaration at Docket No. 3588. He is a managing

1 director at Stout Risius Ross LLC and he will provide
2 evidence in support of the Debtors' valuation of certain
3 liquid and illiquid assets.

4 So Your Honor, as my colleague, Mr. Koenig noted,
5 we filed a large brief in support of our argument and we
6 will hear from the witnesses in the next few days on the
7 factual basis as to why we think the plan can and should be
8 confirmed.

9 We're here today as a result of a lot of hard work
10 and consensus building in the last 14, 15 months and we
11 stand here ready today both to prove our case in chief,
12 confirm the Chapter 11 plan, and hopefully conclude these
13 chapter 11 cases.

14 THE COURT: Thank you very much. Mr. Colodny.

15 MR. COLODNY: Good afternoon, Your Honor. Aaron
16 Colodny from White & Case on behalf of the Official
17 Committee of Unsecured Creditors. Could my colleague Mr.
18 Dowdy be made a cohost to share our presentation?

19 CLERK: Yes, just give me one moment, please.

20 MR. COLODNY: Thank you. While you're doing that,
21 Your Honor, I know I always am batting second to Mr. Koenig
22 here. We come at this from a slightly different
23 perspective, and so while I may repeat some of the things he
24 said, I made an effort to keep my opening remarks shorter
25 for Your Honor.

1 THE COURT: They didn't use their full allotted
2 time.

3 MR. COLODNY: To ensure I don't go over, I think
4 I'll start while they do that.

5 THE COURT: That's fine, go ahead.

6 CLERK: It's -- he's a cohost. He's been a cohost
7 for a little bit.

8 MR. COLODNY: Yeah, I see it. It's just I think
9 he's working on trying to get it to a presentation slide
10 instead of the PowerPoint people.

11 THE COURT: No problem.

12 MR. COLODNY: I'll go a cappella, I guess.

13 THE COURT: Give it another minute. I think if
14 you click from the beginning in the upper ribbon, you'll get
15 there. Go ahead.

16 MR. COLODNY: All right. On June 12th, 2022,
17 Celsius paused withdrawals to stop a run on the bank.
18 Before the pause, as will be shown in the next slide,
19 Celsius and executives repeatedly assured accountholders and
20 the public that everything was fine and all their funds were
21 safe. On the date of the pause, everyone knew that they
22 were not. For a month, Celsius was silent and rumors
23 flowed. Then on July 13th, 2022, we filed Chapter 11 cases
24 before this Court with no plan for how these cases would
25 proceed.

1 The first day declaration painted a picture of a
2 company that was crippled by the crypto winter and had
3 invested with the wrong people. At that time, Mr. Mashinsky
4 testified that the company had a \$1.2 billion deficit. The
5 Committee was appointed on July 27th and was tasked with
6 representing the interests of the Debtors' largest
7 constituency, the company's unsecured creditors including
8 nearly 600,000 retail holders who held the majority of the
9 claims against the Debtors.

10 Those accountholders were dispersed all over the
11 world and were without access to their funds. Shortly
12 thereafter, it became clear that what was testified to in
13 the first day declaration was not the entire story.

14 Rather, information published by the Debtors and
15 investigations conducted by the Committee and independent
16 examiner uncovered a company rife with issues including a
17 hole in the balance sheet that began in March '21, the
18 company's repeated misrepresentations of business practices,
19 an orchestrated corporate cover up of those
20 misrepresentations, and the company's manipulation of the
21 CEL token.

22 And while Mr. Mashinsky and Mr. Leon were telling
23 accountholders that all funds are safe and damn the
24 torpedoes, full speed ahead, they were secretly withdrawing
25 tens of millions of dollars from the platform. That is

1 where we started, with a heavy cloud over these estates,
2 accountholders who had been deceived into entrusting their
3 hard earned assets with Celsius and a platform that was shut
4 down so that the few who were quick to withdraw would not
5 further dissipate the remaining assets to the detriment of
6 those who did not ask.

7 Upon learning all of that information, we acted
8 quickly and firmly to ensure that the bad actors were
9 removed from positions of power that they occupied with
10 control over accountholder assets. Today, we are before
11 Your Honor with a plan that if confirmed and consummated
12 will distribute nearly \$2 billion of Bitcoin and Ethereum
13 and stock in a new company to the Debtors' creditors.

14 The new equity will maximize the value of the
15 Debtors' other assets and provide creditors with the ability
16 to monetize those assets when they would like. Importantly,
17 the plan also preserves claims against Mr. Mashinsky, Mr.
18 Leon, and others related to that wrongdoing to be prosecuted
19 after the bankruptcy case is concluded.

20 The plan includes explicit carveouts to the
21 typical Chapter 11 releases or excluded parties which
22 include all former employees, equity holders, contract
23 counter parties, promoters, advertisers of Celsius that are
24 not specifically identified as released parties.

25 Now to touch on the plan process a bit and move to

1 where we're going with this trial. Since the beginning of
2 these cases, our Committee has had one goal, to return as
3 much value to creditors as soon as we could responsibly do
4 so. The process has taken longer than we would like, but we
5 stand on the precipice of confirming the first
6 reorganization of a major cryptocurrency company.

7 And as Mr. Koenig explained, the path to get here
8 was not easy or rarely a straight line. There were
9 significant and novel legal issues that needed to be
10 resolved to fairly distribute the Debtors' assets. We
11 methodically navigated those issues before this Court, each
12 time putting accountholders as a whole first, building
13 consensus, and creating a foundation for the plan that's
14 before Your Honor today.

15 We methodically navigated -- while those issues
16 were being determined, the Committee did not stand in place.
17 Rather, we pushed the Debtors and worked cooperatively with
18 them to reorganize and rehabilitate their mining business.
19 That was not an easy task. The mining business was in
20 disarray upon the filing and after the filing suffered
21 significant setbacks due to the financial issues of many of
22 its major counterparts.

23 As you will hear from Mr. Kielty of Centerview
24 Partners, the Debtors and the Committee ran a competitive
25 sales and auction process that took advantage of a rebound

1 in the crypto market and renewed interest in sponsoring the
2 plan of reorganization for the Debtors. Through the
3 auction, we were able to leverage that competitive tension
4 to bring multiple bidders to the table and drive the best
5 deal possible for creditors including the distribution of a
6 significant amount more liquid cryptocurrency than was in
7 the stocking horse bid.

8 The Debtors for their part understood that
9 creditors would own substantially all of any reorganized
10 business. And as a part of that auction process, they
11 worked cooperatively with our clients to identify the
12 highest and best -- highest bid and best management team to
13 run the new company. Given the history of Celsius, it was
14 of paramount importance to our clients that Newco be placed
15 in trusted hands and our clients spent many days with each
16 bidder to make the right choice for who would sponsor that
17 plan.

18 At the end of the auction, the Committee members,
19 as they've done throughout this case, acted unanimously to
20 select the Fahrenheit Group as the winning bidder.
21 Fahrenheit is a group of seasoned professionals with
22 experience in the cryptocurrency industry. They also have
23 experience building technology companies and managing risk
24 at large financial institutions. And as you will hear from
25 Mr. Kokinos, the proposed CEO of Newco, each of the members

1 of Fahrenheit will be making a significant financial
2 investment in a new company which has yet to be named.

3 Fahrenheit will stand alongside accountholders
4 with aligned incentives to increase the equity value of
5 Newco for the benefit of everyone. Now, this new company
6 will be a first of its kind business. It will have
7 significant operations concerning two major
8 cryptocurrencies, a Bitcoin mining company, and it will also
9 stake the company's own ethereum. I want to touch on three
10 points that guided the Committee's approach to constructing
11 this new company. First, compliance with applicable
12 regulations.

13 We worked to color inside the lines and consult
14 with the regulators to create a compliant entity out of the
15 gates. We were presented with many unique ideas for how to
16 reorganize and restructure the claims against the Debtors.
17 In many instances, we opted to take the conservative
18 approach to ensure that we could exit bankruptcy. That was
19 of paramount importance to my clients.

20 Bankruptcy provides the Debtors with a fresh start
21 upon emergence. And here, that fresh start is a competitive
22 advantage for the new company that we were unwilling to
23 compromise. We also understood that to emerge on our
24 timeline, we had to work with regulators to ensure that they
25 were comfortable that accountholders were protected on the

1 other side of these Chapter 11 cases. As Mr. Koenig
2 mentioned, we've been in constructive dialogue with the
3 regulators which were led by the Debtors throughout this
4 process and the lack of any objection from regulators is a
5 reflection and validation of that approach. It's also
6 something that differentiates these cases from any other
7 Chapter 11 case concerning a cryptocurrency company.

8 Second, we wanted to provide creditors with
9 liquidity. We understand that creditors did not sign up to
10 own equity and many creditors need access to their
11 investments. However, many of the investments that Celsius'
12 prepetition management made are illiquid and selling them
13 now would have resulted in a steep discount. Putting those
14 assets in a liquidating trust would also not maximize their
15 value, as those instruments typically trade for pennies on
16 the dollar.

17 The plan currently contemplates that those
18 illiquid assets will be transferred to Newco whose equity is
19 anticipated to be listed on NASDAQ. That unique opportunity
20 is only presented through Section 1145 exemption under the
21 Bankruptcy Code. And as we flagged in our brief, there are
22 still regulatory approvals that need to be received for that
23 equity to be listed; however, those regulatory approvals
24 will not hold up confirmation.

25 THE COURT: Is there an estimate of the timeline

1 to get the securities registered?

2 MR. COLODNY: My understanding, Your Honor, is we
3 are waiting on the SEC audit function to approve a
4 preclearance letter. Once that preclearance letter is
5 approved, we'll then submit the Form 10 and there's a 60 day
6 waiting period, then, while the SEC reviews that Form 10.
7 But I want to flag, Your Honor, that it is customary for
8 confirmation orders to be entered with a condition precedent
9 to the plan being the receipt of regulatory approvals.

10 And if those necessary regulatory approvals are
11 not obtained, the plan provides for the mechanism to toggle
12 to the plan B. We believe the plan B will result in lower
13 recoveries, but it will allow the Debtors to proceed with
14 distributing assets to creditors, which is --

15 THE COURT: Is there an estimate on the time for
16 regulatory approval?

17 MR. COLODNY: Of the --

18 THE COURT: When?

19 MR. COLODNY: I think we're confident it will
20 occur by the end of the year, but I don't know that we've
21 received a set estimate from the SEC at this time.

22 THE COURT: Okay.

23 MR. COLODNY: Third, we want to ensure that Newco
24 will be transparent and overseen by a competent and
25 accountable board of directors. Before I proceed, Your

1 Honor, I don't want to make any promises that we are going
2 to receive regulatory approval or emerge by the end of the
3 year. I think the answer, to be candid, it's unclear and
4 it's dependent on whether the SEC will grant our
5 preclearance letter.

6 THE COURT: I wasn't looking for promises.

7 MR. COLODNY: So our third pillar, when we were
8 thinking about this new company, is we wanted to ensure that
9 Newco was transparent and overseen by a competent and
10 accountable board of directors. Newco will be a public
11 reporting entity that will file 10Ks, 10Qs, and 8Ks of major
12 events.

13 It will be overseen by a qualified board of
14 directors, a majority of which were selected by the
15 Committee through an intensive interview process and Your
16 Honor will hear from our committee member, Major Mark
17 Robinson, regarding the board selection process and why our
18 clients believe that they have selected the best set of
19 experienced directors to oversee this new company.

20 We also heard from our constituency who wanted to
21 ensure that creditors had oversight of that board, and we
22 worked with the Earn group who identified three significant
23 prepetition creditors to act as board overseers. Now, five
24 prepetition creditors with a significant stake in Newco will
25 have a seat at the table and that board will ensure that

1 Newco is operated for the benefit of its shareholders who
2 will initially be creditors.

3 There were lots of debates throughout the auction
4 in these cases about how best to reorganize the Debtors'
5 assets, how to reorganize a cryptocurrency company is not
6 something you can look up in a cookbook, and we went through
7 an intensive process which has been detailed in the record
8 and will be detailed by Mr. Kielty to select the option that
9 the Committee believes and the Debtors believe is the best
10 path forward.

11 We heard loud and clear throughout these cases
12 that creditors were not interested in receiving fiat
13 currency through a liquidation under Chapter 7, and as will
14 be demonstrated by the Debtors' witnesses, the recoveries
15 provided to creditors through the plan far exceed the
16 recoveries that would be provided if the Chapter 7 Trustee
17 was appointed and liquidated the Debtors' cryptocurrency,
18 mining rigs, and illiquid assets. And quite frankly, it's
19 not close.

20 The culmination of this entire process is an
21 overwhelming vote in favor of the plan. With over 87,000
22 accountholders voting to accept in the amount of \$2.8
23 billion which far surpasses anyone's wildest expectations,
24 and given where these cases started and the long strange
25 trip it's taken to get here, I think we all can say these

1 results are a vindication of all the hard work.

2 Now, Mr. Koenig has addressed many of the
3 objections and I want to spend the rest of my time speaking
4 about the proposed treatment of CEL token under the plan.

5 One of the questions before the Court is, what is the CEL
6 token. The evidence will show that CEL token is a fungible
7 digital representation of ownership of a unit that was
8 issued by the Debtors. Mr. Ferraro will explain how holders
9 of CEL token could use those tokens to pay the company
10 interest on retail loans at a discounted rate.

11 Accountholders could elect to earn and sell and
12 receive a higher rewards rate on their deposits than if they
13 if they elected to receive in the cryptocurrency the
14 deposited. And CEL token functioned as a type of airline
15 loyalty miles, where people that held a certain amount of
16 CEL token could get access to lower rates or products that
17 the company was offering.

18 Mr. Ferraro will also testify that after the
19 pause, none of those uses continued to exist. To be clear,
20 Celsius has no obligation at any time to redeem CEL tokens
21 or make any payment of cash on account of CEL token. Its
22 only obligation is to return the CEL token to accountholders
23 when requested, if they have accounts in the Earn program.

24 Mr. Ferraro will also testify that Celsius
25 advertised in investor presentations and directly to the

1 public that the value of the CEL token represented the
2 success of Celsius. Mr. Mashinsky regularly touted the
3 value of the CEL token on his public videos and how the
4 efforts of the Celsius team to grow the business would cause
5 the CEL token to increase and used the circular flywheel
6 model to demonstrate this.

7 Put simply, CEL token was an equity or equity-like
8 security whose value rose and fell based on the efforts of
9 Celsius and Celsius' ability to go -- continue as a going
10 concern. Now, what CEL token is, determines how it should
11 be treated under the Bankruptcy Code. If CEL token is an
12 equity or equity-like security, it would come after all
13 unsecured claims. Moreover, if CEL token is determined to
14 be a security, as we have argued in our pleadings, claims
15 arising on account of the purchase or sale of the CEL token
16 would be subordinated and would only recover after all
17 claims are paid in full.

18 However, because the treatment of digital assets
19 under the Bankruptcy Code is a new issue, it is the
20 Committee's position that denying any recovery to CEL token
21 holders who were lied to the same as all other
22 accountholders, would be inequitable. I want to pause and
23 point out that all eligible accountholders could have
24 elected to earn in CEL token, and those that did so
25 knowingly took a greater risk tied to the success of Celsius

1 than those who elected to earn in kind in the cryptocurrency
2 that they transferred to Celsius.

3 For example, those that elected to receive
4 interest in Bitcoin elected to receive a token that had a
5 value independent of Celsius. Those that deposited Bitcoin
6 and elected to receive in CEL, elected for this riskier
7 option which had the potential for a higher return both in
8 terms of the growth of the token and the amount that they
9 received as interest.

10 But Celsius has now failed, and because there are
11 not enough assets to satisfy all claims, providing value to
12 one set of creditors decreases the amount recoveries for all
13 other creditors. The Committee attempted to navigate this
14 delicate balance by offering a 25 cent settlement as value
15 of CEL token under the plan. That settlement was proposed
16 through the plan and after a lot of development, the plan
17 was clear that a vote to accept the plan was a vote to
18 accept that settlement and the settlement was accepted by an
19 overwhelming amount.

20 Those voting results are a testament to the
21 reasonableness of the settlement. Now at the last hearing,
22 Your Honor noted that the treatment for dissenting CEL token
23 holders cannot be imposed on those dissenting creditors
24 unless the Debtors demonstrate that the treatment meets the
25 best interests of creditors test.

1 In other words, the Debtors must show by a
2 preponderance of the evidence that the CEL token holders
3 receive more under this plan than they would receive in a
4 Chapter 7 liquidation. Here, that test can mean that in
5 three ways. As we discussed before, first, the Court could
6 find that the CEL token was the equivalent of equity or
7 should be recharacterized as equity.

8 THE COURT: Let me just stop you there for a
9 minute. In the SEC's complaint against Mashinsky and
10 Celsius, the complaint takes the position that the Earn
11 accounts under the Howey Test were securities.

12 MR. COLODNY: Correct.

13 THE COURT: If the Earn accounts were securities
14 and the CEL token was a security, wouldn't they both be
15 subordinated and essentially be in the same class for
16 distribution?

17 MR. COLODNY: I don't agree with that, Your Honor.

18 THE COURT: Okay, tell me why.

19 MR. COLODNY: Because the Earn accounts are the
20 akin to a debt obligation. Celsius has a payment obligation
21 under an Earn account to return the assets to
22 accountholders. In every Chapter 11 case, there are
23 unsecured notes. Unsecured notes is the first item listed
24 in the definition of security under the Bankruptcy Code, and
25 payment obligations on behalf of unsecured notes are never

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1 subordinated. Damage claims arising from those unsecured
2 notes may be, but the payment obligations are not.

3 When I think about the CEL token, it's a security
4 inside of that security and because it's an equity interest
5 with no payment obligation on behalf of the Debtors, it
6 should be treated differently than the Earn accounts. I
7 know it's a fine distinction, but I think it's one that's
8 incredibly important and it is one that is -- happens in
9 bankruptcy cases all the time. I've dealt with bankruptcy
10 cases with \$2.7 billion worth of payment obligations on
11 unsecured notes and it's never mentioned that those payment
12 obligations will be subordinated.

13 So I think where I was when I left off were the
14 three reasons how it can meet the best interest test. The
15 first, as I talked about, was if it was recharacterized.
16 The second is 510(b) as you mentioned. In both cases, the
17 plan could be confirmed if the Court makes either finding if
18 it provided no value to CEL token holders. However, Your
19 Honor doesn't need to reach those points.

20 As Mr. Compagna will testify, you only need to
21 find by a preponderance of the evidence that the value of
22 the CEL token on the petition date was less than 34 cents to
23 determine that the best interest test is met. And here,
24 that's clearly the case.

25 THE COURT: The 34 cents because of what?

1 MR. COLODNY: Thirty-four cents because if you
2 look at 34 cents times the 47 percent recovery analysis and
3 look at the 25 cent proposed recovery times the 65 percent -
4 - 67 percent reorganization, the 67 percent reorganization
5 on the 25 cent recovery is greater than 47 on the 34
6 percent. Sorry.

7 Now, if you consider the CEL token in terms of its
8 value being tied to Celsius and consider that Celsius by its
9 own admission was wildly insolvent as of the petition date
10 and that the Celsius platform was shut down and there was no
11 longer a use for the CEL token, the value on the CEL token
12 has to be zero or something close to it. Mr. Galka, our
13 expert, is going to tell you that determining the specific
14 value of the CEL token at a point in time is not easy
15 endeavor for a number of reasons.

16 First, it lacks any underlying cash flows or
17 financial metrics that would support its value in a manner
18 that's traditionally applied to valuation. The market price
19 of CEL token could be an indicator of the value; however, as
20 the evidence will show the market price, here was never an
21 accurate indication of its value as it was significantly
22 affected by Celsius' covert purchases of the token prior to
23 the petition date.

24 Celsius advertised that it was purchasing the
25 amount of CEL token it needed to pay customer rewards. That

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1 was a business model. It's one of the critical elements of
2 why CEL token should be a security. The evidence will show
3 that what Celsius did not tell the public or even many of
4 its employees was that it was purchasing far more than
5 required to pay rewards to inflate the price and create the
6 perception of success for its flailing enterprise.

7 Celsius has admitted that, and I'm quoting from
8 the statement of facts that Celsius admitted was true as
9 part of its non-prosecution agreement it entered with the
10 DOJ. The rise in the value of the CEL token was not the
11 product of market forces, but was instead attributable to
12 the fact that Celsius executives including Mashinsky had
13 orchestrated a scheme to manipulate the CEL token by taking
14 steps to artificially support the price of CEL.

15 Now, Your Honor will hear testimony from Mr.
16 Galka, our expert witness and Mr. Galka will corroborate
17 that admission and he will --

18 THE COURT: Is that admission entitled a
19 preclusive weight in this trial?

20 MR. COLODNY: I'm not sure, standing here today,
21 Your Honor. But what Mr. Galka will demonstrate by the
22 evidence is that applying every assumption Celsius' favor,
23 it purchased CEL -- it's purchases of CEL token exceeded the
24 amount of CEL token it paid the customer by over \$100
25 million. And that fact led him to conclude that Celsius was

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1 taking actions to affect the price of the token prepetition.
2 And the market wasn't only affected by Celsius' purchase of
3 the token. The market was lied to as Celsius persistently
4 misrepresented its financial position and covered up those
5 lies.

6 It was not the case that some people knew and some
7 people didn't. Some people did. They watched the videos
8 live and then the clips were deleted. Now, you only have to
9 look at the first pages of our presentation where Celsius
10 and executives were telling the market everything was fine,
11 while under the curtain, they've admitted they were
12 insolvent by a billion dollars.

13 Now, prior to starting Elementus, Mr. Galka traded
14 complex derivatives for over nine years. Part of his role
15 in those positions was to identify dislocated markets or in
16 other words, markets where for the price of an asset did not
17 reflect its intrinsic value. And Mr. Galka will testify
18 that following the date that Celsius paused withdraws based
19 on his review of market data and significant experience
20 trading dislocated markets, it is his opinion that the
21 market for CEL token was extremely dislocated and
22 thereafter, the market price was not remotely accurate
23 indication of its value.

24 Now, at the last hearing, you asked me the very
25 direct question, what will Mr. Galka say the CEL token is

1 worth on the petition date.

2 THE COURT: Yes, and I gave my permission earlier
3 today that a supplemental declaration can be -- I don't know
4 whether the order got entered or not. I was not at the
5 courthouse this morning, but I was asked that question. I
6 gather there was a request to be able to file a supplemental
7 declaration and I approved that.

8 MR. COLODNY: Correct, Your Honor. And the reason
9 why we want to file that supplemental declaration is we
10 understood that you want to give everybody the chance to see
11 the testimony. So we didn't -- even though we didn't want
12 it to come out on the (indiscernible). We wanted everyone
13 to have the opportunity. And what Mr. Galka will testify is
14 that if asked to put a price on the CEL token on petition
15 date, he would not have quoted a price. I think that's
16 unremarkable, and it's because he believes that the CEL
17 token had no value and there were no economics supporting
18 the value of the token on that petition date that he has
19 seen.

20 Mr. Ferraro, the CEO of the company, will
21 similarly testify that he believed the CEL token had little
22 to no value on the petition date and there is no
23 economically rational reason for the value to increase
24 between the pause and the petition date. Now, people have
25 taken issue with that conclusion, but it should come as no

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1 surprise. In fact, well before the pause, Celsius disclosed
2 that the CEL tokens may become unusable, illiquid, and/or
3 worthless in the event that the Celsius platform ceases to
4 operate.

5 Now, that's enclosed in the risk disclosures that
6 as Your Honor found were accepted by 99 percent of all
7 accountholders. Put simply, Your Honor, it's unremarkable
8 that a token based off of the success of a company whose
9 sole use related to the operation of the platform that
10 company ran would have no value when that platform
11 spectacularly failed.

12 In closing, these cases have been a difficult
13 journey for all accountholders. The plan has been accepted
14 by an overwhelming amount of those accountholders and as
15 will be demonstrated throughout this week, it meets all the
16 requirements for confirmation under the Bankruptcy Code and
17 should be confirmed.

18 THE COURT: Thank you very much, Mr. Colodny.

19 MR. COLODNY: Thank you.

20 THE COURT: All right. Let me hear from the
21 United States Trustee next.

22 MS. CORNELL: Good morning, Your Honor.

23 THE COURT: Good afternoon, but very nice to see
24 you in the courtroom, Ms. Cornell.

25 MS. CORNELL: Shara Cornell for the record, the

1 Office of the United States Trustee. Your Honor, we
2 appreciate the hard work of all the parties in these cases
3 and their engagement with our office on various issues. We
4 have an active creditor body which began on first days,
5 continued through the 341 meeting with over 1,000 creditors
6 in attendance, up to and through this confirmation hearing.
7 But our role did not end at the 341 meeting, as is often the
8 case. This case required more.

9 We actively managed this case which resulted in
10 among other things, an examiner, an ombudsman, and several
11 cost saving measures, and the benefit of the work product of
12 the examiner has been discussed extensively previously.
13 Also given that the Debtors' assets are cryptocurrency, cash
14 management required unique disclosures and protocols to
15 safeguard these assets which are ultimately to be
16 distributed to creditors.

17 We worked with the professionals to ensure the
18 safety of these resources for the Debtors' estate and like
19 the Debtors and the Committee and many of the professionals
20 in this case, we have been routinely contacted by creditors.
21 There was activity by various individuals that resulted in
22 referrals to certain agencies, matters that we take
23 seriously as do our sister agencies and departments.

24 Like the Committee and the Debtors and their
25 professionals, we've also been on the receiving end of toxic

1 language and threats --

2 THE COURT: So has the Court.

3 MS. CORNELL: -- of course -- from creditors and
4 parties and interest. But through all of this, our goal has
5 remained steadfast. We moved this case along. We're also
6 following the letter and the spirit of the law. And we do
7 stand here today. We're nearing the finish line.

8 With all that said, we have a few objections
9 pending to confirmation which we were -- which were agreed
10 at the disclosure statement hearing to be heard today at
11 confirmation. And during the interim, we've engaged in many
12 discussions with the various professionals and the UST is
13 appreciative of those efforts to claw back in some respects,
14 the exculpation and release provisions. And there really
15 was a lot of negotiating and in some instances disagreement,
16 but overall the Debtors and their professionals worked
17 diligently to include many of our concerns.

18 We still hope that our remaining issues can be
19 negotiated before the end of this confirmation proceedings.
20 While these revisions were helpful, like the temporal
21 limitation, the exculpation provision, both the exculpation
22 and release provisions are still somewhat overbroad and need
23 further revisions and clarifications on the record, which we
24 expect the Debtors to do in the next few days.

25 First, with respect to exculpation, only estate

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1 fiduciaries can and should be exculpated by the plan. While
2 the United States Trustee believes that a proper exculpation
3 tracks 1125(e) of the code providing for a limitation of
4 liability in connection with certain good faith solicitation
5 and plan participation efforts, Courts in this District, as
6 Your Honor knows, routinely follow a Aegean Marine Petroleum
7 Network, Inc., 599 B.R. 717. But here, the Debtors seek
8 exculpation for former and current --

9 THE COURT: I'm not sure I agree with that
10 statement completely. I think that judges on this Court,
11 including myself, have granted broader exculpation than that
12 decision. So there is not uniformity among the judges on
13 our Court.

14 MS. CORNELL: No, I would not say there's
15 uniformity, Your Honor. No. But it is often quoted and
16 used in this context.

17 Transactional parties are also exculpated in this
18 instance, but they're not limited to the specific
19 transactions that they took part in. Indeed, the ad hoc
20 Committees, the BRIC, Fahrenheit, the class claim
21 representatives, Coinbase, PayPal, all performed specific
22 and limited acts but are being provided broad protections
23 for any and all work done in connection with these cases.
24 The fact that a party is engaged in one action before a
25 Bankruptcy Court does not entitle that party to have all of

1 its actions within a bankruptcy case protected.

2 For example, exculpation for events, occurrences,
3 and agreements is vague and not necessarily limited under
4 Aegean. Furthermore, we believe a temporal scope is
5 necessary and one has now been added by the Debtors. But
6 the scope is confusing when read with the other provisions
7 because the other provisions refer to entities that are not
8 in existence and could not have performed any of the
9 appropriately exculpated actions during the identified
10 scope. Entities that are not in existence or could not p
11 perform the properly exculpated actions during the temporal
12 scope should be removed to avoid any confusion.

13 Second, the released parties are still over broad
14 as well. For example, the plan administrator is a released
15 party. The Debtors have not yet provided a factual basis or
16 a legal basis for his inclusion. What consideration the
17 plan administrator has made to the case must be identified.
18 Evidence of valuable consideration for each party is
19 necessary.

20 Also, while the Debtors allege that various
21 parties played an important role, for example, certain ad
22 hoc committees, it is unclear as to what valuable
23 consideration those parties gave yet, and the terms like
24 other professionals as it relates to released parties is
25 also somewhat unclear. Any party to be released should be

1 named in the plan and not just referred to, generally
2 speaking, as other professionals.

3 Moreover, the Debtors are yet to explain how
4 claimants that have rejected the plan will be bound by these
5 release provisions. You're not a releasing party if you
6 have rejected the plan, but you're also a releasing party if
7 you fail to vote for the plan. This question requires
8 additional information on the record by the Debtors.

9 Lastly, the confirmation order includes a waiver
10 of Rule 3020. Congress intended to give parties 14 days for
11 a reason and there is no basis to waive that in this case.
12 We do not want to force people or parties into expedited
13 motion practice, which is a waste of judicial resources and
14 estate money. The most recent agenda I believe was the 29
15 responses for confirmation, which is an unusually large
16 amount of responses, and we do not want to cut off the
17 rights of these parties.

18 There are a lot of issues and I think 14 days,
19 which is the rule not the exception, should be applied in
20 these cases. Also Your Honor, as an update, after the
21 hearing on Friday regarding the United States Trustee's
22 concerns about Committee membership, as the docket reflects,
23 we filed a supplemental notice of appointment at Docket No.
24 3631.

25 Additionally, Your Honor, United States Trustee

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1 and the Committee have been in contact over the weekend and
2 have reached a resolution in principle regarding certain of
3 the exculpation language regarding to Mr. Noyes and any
4 potential actions associated therewith. The language is
5 currently being finalized and we hope to present that to the
6 Court later this week via the Debtor.

7 This concludes our opening remarks and we're
8 available to answer any questions from the Court or
9 otherwise.

10 THE COURT: Thank you, Mr. Solomon.

11 MS. CORNELL: Thank you.

12 THE COURT: All right. The Ad Hoc Earn Account
13 Group.

14 MS. KUHNS: Good afternoon, Your Honor. Joyce
15 Kuhns of Offit Kurman for the Ad Hoc Group of Earn
16 Accountholders. This has undisputedly been a long and
17 arduous road for the Earn customers, starting with the pause
18 and subsequent revelations of a systemic fraud perpetrated
19 on them, and then navigating the intersection of two
20 seemingly disconnected worlds, the decentralized world of
21 cryptocurrency which they were used to, and the centralized
22 bankruptcy forum which they were not.

23 There were many misunderstandings at that time.
24 New legal theories had to be tested, starting with who owned
25 the customer deposited cryptocurrency. It is no surprise

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1 that the January 4 decision determining that it was property
2 of the estate sent shockwaves through the Earn community.
3 The concept of dollarization was also concerning,
4 dollarization of crypto claims as of the petition date, and
5 at a time when Bitcoin, for example, was steadily rising in
6 value. It led to the inevitable Earn question. Who is
7 benefiting from the appreciation in the crypto and why isn't
8 it us?

9 These were among the concerns that led to the
10 formation of the Ad Hoc Earn Group by significant Earn
11 claimants who realized the need to come together and speak
12 with a unified voice to advance their common goals. On
13 behalf of the Ad Hoc Group, Mr. Nagi and I would like to
14 publicly thank Brett Perry, Nicholas Farr, and Immanuel
15 Herrmann, the founders of the Ad Hoc Group and its original
16 steering committee members of which Mr. Herrmann was chair,
17 who were dedicated from the onset to two guiding principles,
18 parity among creditors and consensus building, and never
19 wavered in serving the larger Earn community even at the
20 expense of their individual interests.

21 The first test of the ad hoc's cohesiveness came
22 with a July mediation before Judge Wiles. It also served as
23 a reality check of what could be accomplished and what could
24 not under the Bankruptcy code. The group's acceptance of
25 certain constraints such as dollarization of crypto claims

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1 on the petition date led to a successful mediation that set
2 the treatment of Earn versus Borrower claims, led to the
3 Borrower settlement, critical milestones on the path to plan
4 confirmation among other things achieved in the mediation
5 term sheet.

6 Having had a seat at the table at the mediation,
7 the Ad Hoc and its larger constituency recognized the
8 importance of keeping a seat at the table as future
9 stockholders of Newco. This led to intense series of
10 negotiations among the primary stakeholders, resulting in
11 the Newco -- the three Newco board observer seats being
12 designated by the Ad Hoc Earn Group and Earn designee
13 appointed to the Litigation Oversight Committee responsible
14 for prosecuting future litigation to enhance creditor
15 recoveries, and lastly, to enter into a plan support
16 agreement among the Debtors, the Committee, the Ad Hoc Earn
17 Group, certain Earn pro se claimants, the class action
18 plaintiff Mr. Tuganov, and Simon Dixon.

19 No one got everything they wanted in this case,
20 but everyone had an opportunity to be heard in this
21 courtroom and we appreciate that, Your Honor, as well as to
22 be heard outside the courtroom in an unprecedented mix of
23 media, mass emails, Twitters, telegram, Twitter spaces, town
24 halls and YouTube presentations. The active participation
25 of creditors in this case has set a new bar for creditor

1 engagement, enabling consensus building to occur and
2 culminating in the astounding result of almost \$2.5 billion
3 in Earn claims voting to accept a plan in a crypto case.

4 No one did this alone, admittedly, but as a result
5 of the dedication of many, including the tireless efforts of
6 the Debtors' new management, the Committee, their respective
7 counsel, and their professionals, in a very complex case
8 which as you've heard had many, many active constituents and
9 novel issues. In the end, the major stakeholders came
10 together in their commitment to deliver the best outcome
11 possible to creditors with the quickest exit achievable.

12 Now we are at the final stage. We look forward to
13 a successful confirmation process and the long awaited start
14 of distributions, hopefully in 2023, as well as the future
15 opportunities presented to creditors as shareholders in
16 Newco. Thank you, Your Honor for the time today on the
17 agenda.

18 THE COURT: Thank you for your presentation. All
19 right, counsel for the Ad Hoc Borrowers Group.

20 MR. ADLER: Good afternoon, Your Honor. David
21 Adler from Carter & English on behalf of the Ad Hoc Group of
22 Borrowers. First, I want to say it's again pleasure being
23 back in this courtroom. This is only the second time that
24 I've been here since COVID started. The first was in June,
25 maybe July.

1 But I wanted to talk a little bit about the
2 concerns of the Borrowers, and as Your Honor knows, the
3 group that I represent are the group of individuals who
4 transferred their crypto onto the Celsius platform in
5 exchange for a loan and for which they paid interest. So
6 they paid interest. They did not take interest out. And
7 that was primarily a choice that they made because they
8 wanted to have some liquidity against their crypto, but they
9 didn't want to run the risk of having a disposition event
10 because many, many of the borrowers and Celsius have
11 extremely low basis. And a disposition event would be very,
12 very bad in this case, especially for some of the higher
13 borrowers.

14 So, going back in time to March, we were happy
15 with the NovaWulf transaction because it kept the loan alive
16 and following the auction, we received thereafter a plan
17 that, in which the Debtor wanted to exercise its setoff
18 rights, which would potentially be very, very bad for the
19 Borrowers in terms of a disposition. And that was sort of
20 the groundwork where we were when we got to the mediation.

21 So after three intensive days of mediation down
22 the hall and upstairs, the Borrowers reached -- or the
23 steering group reached a resolution on the issues in which
24 the Borrowers would pay back the loans if they could. They
25 were given the option to do that. As Mr. Koenig said

1 earlier, the Debtors have indicated that they'll cooperate
2 in terms of finding a new lending source, and we've spent
3 many, many, many hours since the mediation identifying new
4 sources who can provide refinancing to the Borrowers. And
5 in exchange for that, the excess claim is essentially, is
6 treated as the Earn claim.

7 The Borrowers will get back 100 percent of their
8 principal amount in crypto if it's Bitcoin and ETH, but not
9 in the other currencies. So from the Borrowers'
10 perspective, that was a result that they could live with.
11 Certainly, the voting reflects that the Borrowers were --
12 that the plan was acceptable to the Borrowers, and I do want
13 to say that probably the biggest issue in the mediation was
14 over the liquid crypto weighted distribution because for the
15 Borrowers that need to refinance, they need to get as much
16 crypto as possible in order that their LTVs are in the range
17 that traditional crypto lenders require. And it's hard to
18 say that, traditional crypto lenders, but be that as it may.

19 So Your Honor, we have -- I worked consensually
20 with the Debtors and the Committee. I want to thank Mr.
21 Koenig, Mr. Kwasteniet, Mr. Colodny, Mr. Wofford for all
22 their assistance over the last few months in trying to get
23 to an achievable plan. We do have a couple of issues that
24 will need to be addressed at some point. I mean, one issue
25 and I've raised it with Mr. Koenig and Mr. Colodny. It's

1 not a big issue, but there's -- there was supposed to be an
2 election on the ballot form for whether the Borrower wished
3 to repay or not which did not make it on the ballot. Some
4 subsequent form of notice needs to be sent out to the
5 Borrowers so that they can make that election.

6 And there are also some timing issues that need to
7 be addressed in the plan, but I consider those minor non-
8 substantive issues in this plan. I mean, the result that
9 was achieved at the mediation as a result of that --

10 THE COURT: How many Borrowers are there?

11 MR. ADLER: 23,000, Your Honor. Now, when I say
12 23,000, there are some Borrowers -- if you have Bitcoin and
13 you had ETH, you show up twice on the spreadsheet. So when
14 you cull all those out, it's probably more like 18,000 or
15 so. Approximately half of them are in the United States;
16 approximately half of them are international, with the
17 biggest international locations being Australia, Spain. I
18 think actually Poland is one of the largest jurisdictions
19 and that's because the largest Borrower in this case who
20 I've never spoken to, is apparently a resident of Poland.
21 And you know, I mean, I think that that Europe and Australia
22 dominate on the borrower side of the equation.

23 So, obviously we have a couple of issues to work
24 out, but we are supportive of the plan. The voting reflects
25 it. There have been people, Borrowers, who have asked Your

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1 Honor for a ruling on the collateral and the only thing that
2 I would say is we would ask Your Honor to limit that ruling
3 to whether it is property of the estate or not, okay, so
4 that we're not making any rulings about any other potential
5 issues.

6 THE COURT: Okay, thanks, Mr. Adler.

7 MR. ADLER: Okay. Thank you, Your Honor. On that
8 note, I will conclude.

9 THE COURT: Thank you. Thank you very much. I've
10 said this before. I greatly appreciate what my colleague
11 Judge Wiles did in the three-day mediation. There were lots
12 of issues that got resolved. Essentially, it was very
13 important to us being here today. I appreciate that.

14 All right, the Withhold Ad Hoc Group, Ms. Kovsky.

15 MS. KOVSKY-APAP: Good afternoon, Your Honor. Deb
16 Kovsky, Troutman Pepper, on behalf of the Withhold Ad Hoc
17 Group. As Your Honor knows, at the outset of these cases,
18 the Withhold accountholders, including members of the
19 Withhold Ad Hoc Group were kind of a weird no man's land on
20 the Celsius platform. They weren't in the Earn program
21 anymore and if the Debtors had been able to offer custody
22 services in their states of residence, they would have been
23 in Custody, but that wasn't the case. So instead their
24 status was kind of ambiguous, neither fish nor fowl.

25 And the question of the status of their assets

1 could have been litigated all the way to resolution,
2 possibly through appeals at great expense and uncertainty.
3 Instead, the Withhold Ad Hoc Group, the Debtors, and the
4 Committee found a more efficient pathway to deal with the
5 complex and novel questions regarding property of the estate
6 raised by the Withhold assets, and those discussions and
7 pathway resulted in the Withhold settlement, a compromise
8 that provided enhanced treatment for the Withhold
9 accountholders while allowing a substantial bucket of assets
10 to be treated as property of the estate.

11 And the settlement was embodied in the plan and
12 has been overwhelmingly accepted by Class 7, the Withhold
13 accountholders. The Withhold Ad Hoc Group appreciates the
14 Debtors' and the Committee's willingness to work with us and
15 to find a compromise solution that recognize the claims of
16 the Withhold accountholders while avoiding the cost and
17 complexity of an extended litigation.

18 Withhold Ad Hoc also appreciates the Debtors and
19 the Committee working with us on our informal comments to
20 the plan which obviated the need to file a formal objection.
21 The Withhold Ad Hoc Group was concerned about the potential
22 preclusive effect that the Debtors' calculation of
23 withdrawal preference exposure under the plan might have.
24 The Debtors and Committee agreed to add clarifying language
25 that those calculations will not be binding on any defendant

1 in a subsequent avoidance action.

2 Even more importantly, the plan as it was
3 originally solicited out appeared to give the plan
4 administrator unfettered discretion to distribute fiat
5 currency rather than cryptocurrency to accountholders. Now,
6 we understand that the plan does provide for the retention
7 of distribution agents for the purpose of distributing
8 cryptocurrency, but those are time limited contracts and
9 there was nothing in the plan that really pushed or
10 encouraged the distribution of crypto rather than fiat.

11 And as Your Honor is well aware from the course of
12 this case, and as Mr. Colodny alluded to, many
13 accountholders feel very, very strongly about getting back
14 crypto, not fiat currency . And this is particularly true in
15 instances where there may be a delay in a claim becoming an
16 allowed claim. So accountholders are very concerned about
17 potentially not getting the benefit of the appreciation and
18 value of crypto if the plan administrator could simply
19 distribute fiat currency at some later point in time.

20 The Debtors and the Committee agreed to language
21 requiring the plan administrator to use commercially
22 reasonable efforts to make distributions in liquid
23 cryptocurrency, rather than fiat, to the greatest extent
24 possible. The language requires reserves on account of not
25 yet allowed claims to be held in the form of liquid

1 cryptocurrency. And if by the time a distribution is to be
2 made, there isn't a distribution agent around who can
3 actually distribute crypto, the plan now requires that the
4 crypto be converted to fiat as close to the distribution
5 date as possible, the idea being that this would allow the
6 amount of the fiat to mirror as closely as possible, the
7 appreciated value of the crypto that otherwise would have
8 been distributed.

9 And these changes provide important protections to
10 accountholders. We really appreciate the constructive
11 approach taken by the estate's professionals in negotiating
12 these terms with us.

13 Finally, I wanted to say a couple of words about
14 the ADR procedures. The Withhold Ad Hoc Group filed a
15 reservation of rights with respect to the ADR procedures in
16 connection with the disclosure statement hearing. Since
17 then, we've had extended discussions with the Committee's
18 professionals resulting in significant modifications to the
19 proposed procedures.

20 The Committee has clarified that the procedures
21 are not binding on anyone who did not file a proof of claim
22 and revisions to the procedures which were filed as a
23 redline also make it easier and more straightforward to opt
24 out, and among other changes, make the flow of information
25 between the parties mutual rather than one sided.

1 However, as I'm sure you'll hear more from Mr.
2 Kleiner, the ADR procedures are not yet finalized and it
3 does seem a little bit odd and perhaps premature for the
4 Court to approve procedures that are still being discussed
5 and negotiated.

6 The Withhold Ad Hoc Group did not see this as a
7 basis to deny confirmation of a plan, particularly one with
8 widespread support of creditors, including the members of
9 the Withhold Ad Hoc Group themselves; however, we suggest it
10 may make more sense to defer approval of the ADR procedures
11 until they're more fully baked. But either way, whatever
12 the Court rules, we will certainly continue to --

13 THE COURT: Speed up the process and finalize
14 everything.

15 MS. KOVSKY-APAP: We are absolutely working on
16 that. We are continuing to negotiate the procedures in good
17 faith, exchanged emails today and we are working
18 expeditiously. So, in conclusion, the Withhold Ad Hoc Group
19 believes the plan is not perfect but no plan of
20 reorganization ever is. We do believe that it is the best
21 option under the circumstances and we are happy to join the
22 Debtors, Committee, and other ad hoc groups in supporting
23 it.

24 THE COURT: Thank you very much, Ms. Kovsky. All
25 right. Next is Mr. Frishberg.

1 MR. FRISHBERG: Thank you, Your Honor. To start
2 off with, I think everyone will agree that I'm direct and I
3 speak my mind, so I will do so today. I believe that
4 confirming this plan is the best path forward for creditors
5 that we have at this time. And I'm not saying this only
6 because I'm the PSA, I'm saying this because I truly believe
7 it, that this is the best option we have currently.

8 The Debtors, the UCC, the U.S. Trustee, numerous
9 regulators, all the professionals in this case, and more
10 have done a very, very good job thus far. (indiscernible)
11 know, this is a very complex and unusual case. The Debtors
12 and the UCC have stated that accountholders overwhelmingly
13 support the plan, including the visions about the EIP
14 bonuses and releases.

15 I would like to add a bit of clarity to that.
16 Something I have not heard mentioned thus far is that the
17 reason people, creditors such as myself voted for it, it was
18 the only option that was not a very bad scenario of the plan
19 getting voted down. Customers are very openly against the
20 overly, in my opinion, broad releases to the plan, but
21 again, it is what it is, to (indiscernible) employees and as
22 well in my opinion, the unnecessary (indiscernible)
23 employees.

24 The reason they voted for it is as well as I did
25 is because they want it to be over. An analogy that I think

1 sums this up well, is imagine that you are (indiscernible)
2 deserted island in the middle of nowhere and then you find
3 some moldy bread, a tiny bit of mold. You're going to eat
4 the bread since it is better than starving to death. I know
5 I would eat the bread and it seems about 98 percent of
6 creditors chose to also eat the bread. Though I would love
7 nothing more than to cut off the moldy parts which include
8 the EIP bonuses and a few others. It's not an option, so I
9 voted for the plan.

10 We must (audio glitch) and we must (audio glitch).
11 This is (audio glitch) the plan being confirmed regardless
12 of the presence of the metaphorical mold, trimming off the
13 metaphorical small moldy parts would improve the plan, but
14 slightly moldy bread is better than nothing in this
15 scenario. Thank you, Your Honor.

16 THE COURT: Thank you very much, Mr. Frishberg.
17 All right, Mr. Sabin, you're going to argue for Mr. Tuganov?
18 Just so everybody knows, my plan is after Mr. Sabin, we have
19 three more openings in opposition to the plan. We'll take a
20 brief recess after Mr. Sabin and before we proceed with the
21 remaining three. Mr. Sabin, good afternoon.

22 MR. SABIN: Thank you, Your Honor. It's a
23 pleasure to be back here in person. It's a pleasure to
24 hopefully soon stand here and thank many people for tireless
25 work. I am Jeff Sabin from Venable on behalf of Ignat

1 Tuganov, a long time Earn rewards customer, creditor, one of
2 three class representatives appointed pursuant to the now
3 final order of this Court approving the settlement of the
4 class proof of claim that among other things allowed
5 noncontract claims for all accountholders.

6 And he was also and still is a party to the plan
7 support agreement and spent the better part of his three
8 days, and I did, too, before Judge Wiles. And you've
9 already taken notice of the benefits of that.

10 I requested ten minutes to otherwise speak to
11 support this plan, to cover matters material to confirmation
12 not covered or otherwise that I thought needed to be
13 supplemented by the very good efforts of all those who come
14 before me, be it Debtors' counsel, UCC counsel, or other
15 supporters. I'm happy to say that if I were a contestant on
16 "Name That Tune," I can do it in two minutes.

17 But here goes. First and most importantly, you
18 asked Mr. Colodny a question that I have a supplement to an
19 answer. There is a provision in the order of approving the
20 class settlement agreement, now final, that otherwise waived
21 objections to otherwise trying to subordinate pursuant to
22 510(b) any of the claims of Earn customers and/or retail
23 borrower customers.

24 Secondly, I believe that that the plan as amended
25 is confirmable, not only because I have confidence that the

1 record will establish by all of the witnesses and the
2 testimony to be educed that otherwise you can make findings
3 of fact that would be supportive of confirmation, but also
4 by the vote itself and the use of the vote in connection
5 with three settlements, not that you otherwise approved, but
6 are embedded in the plan including the retail borrower
7 settlement, which has in it as a component part not yet
8 mentioned in the record of an additional substantive
9 consolidation of several lenders in this case and several
10 debtors in this case.

11 And finally and most importantly, as you've heard,
12 Mr. Tuganov is no different than all of the other customers.
13 He is waiting and hopefully sees the light at the end of the
14 tunnel, indeed, that the PSA milestones of October 31 for
15 entry of a confirmation order and a December 31, 2023
16 effective date can be had.

17 In addition, as you heard from Mr. Colodny,
18 there's no promise that all the conditions to the effective
19 date can be done, but I think we are confident that the
20 tireless efforts will continue, not just of the Debtors and
21 the Committee and the U.S. Trustee, but the regulators
22 themselves and of course, the plan sponsor such that the
23 transparency referred to by Mr. Koenig is indeed going to be
24 helpful to satisfy those conditions.

25 And so, like so many others, it has been a long

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1 and winding road, and as the song goes, I hope that we soon
2 get to sing a different tune. Maybe everyone can sing happy
3 or at least happier. Thank you, Your Honor.

4 THE COURT: Thank you very much, Mr. Sabin. All
5 right, we are going to take -- it's 3:40. We'll take a ten-
6 minute recess. We'll resume at 3:50 and when we resume Mr.
7 Ubierna, you're up next, okay? All right.

8 (Recess)

9 THE COURT: Everybody can sit down. All right,
10 the Court is back in session. Mr. Ubierna, it's your turn
11 for an opening statement.

12 MR. UBIERNA DE LAS HERAS: Good afternoon, Your
13 Honor. Victor Ubierna, pro se creditor. Thank you for your
14 time. First, English is not my native language as I am from
15 Spain. So I ask that you forgive me if I make any mistake I
16 speak in English. During this Chapter 11 bankruptcy, I have
17 filed some objections and joinders. Since the beginning, I
18 believe that while other people were just complaining in
19 social media, the way to be useful to others was to file
20 formal documents.

21 With regard to plan confirmation, I filed an
22 objection with Docket No. 3542. This bankruptcy have been
23 particularly difficult for many people, so I don't object to
24 closing this difficult chapter in their lives. I objected
25 to two items. First, regarding the emergence incentive

1 program, I argue that insider employees already receive
2 salaries, that they have a fiduciary duty to act in the best
3 interest of the company, and that the bar is very low for
4 these rewards. For example, Ferraro will receive a bonus if
5 this Court confirms a plan before the end of October. It is
6 obvious that a Chapter 11 CEO should be working to get a
7 plan confirmed.

8 Furthermore, a lot of the metrics are just what
9 they should be doing as employees. These targets are
10 objectives that are well within the scope and scale of their
11 existing contractual obligations to the company as
12 stakeholders and creditors. Some items haven't got
13 numerical targets and (indiscernible) and can be easily
14 abused.

15 Secondly, I also believe that the releases are too
16 broad and that creditors did not have a real chance to opt
17 out. (audio glitch) argue that the third party releases are
18 wholly consensual; however, evidence does not point on that
19 direction. I want to remark that a little more than 5,000
20 holders in voting classes that voted to accept the plan
21 attempted to select the third-party release opt out and were
22 not permitted to do so. How can they argue that releases
23 are wholly consensual if 5,160 creditors are being forced
24 into them against their will? I joined what the UST has
25 just said about the releases.

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1 Lastly, I do welcome the change that the Debtors
2 made to the release and the exculpation provision. They
3 clarify that what happened on the failure to file a proof of
4 claim on the Voyager bankruptcy is not covered by those
5 provisions. That is a good change in response to my
6 objection. Thank you. Nothing more for today, Your Honor.

7 THE COURT: Thank you very much, Mr. Ubierna.
8 You've been a regular participant in the hearings and I
9 appreciate hearing from you. Thank you. All right, counsel
10 for Pharos Fund.

11 MR. NOSKOV: Your Honor, Victor Noskov, Quinn
12 Emanuel on behalf of Pharos. We're here today for an
13 objection on the best interest of creditors test. The test
14 is simple. It's simply whether the Debtors would realize
15 more value under Chapter 7 than what they would realize
16 under the plan as proposed by the Debtors.

17 As Your Honor aptly noted with regard to the CEL
18 token valuation, the test, the burden is on the Debtors to
19 prove that the test is satisfied and as long as the plan is
20 not unanimous, and here our client has objected to the plan,
21 they have to carry that burden.

22 Our simple position is that they have not, that
23 there's insufficient evidence in support of the best
24 interest of creditors test here. And that is for two
25 reasons. On the one hand, in support of their plan, the

1 Debtors submit a liquidation analysis that is severely
2 depressed.

3 THE COURT: It usually is.

4 MR. NOSKOV: Correct, Your Honor, but usually with
5 justification. And in our view, the evidence this week will
6 show that the severely depressed value which is by about 80
7 to 85 percent of the plan value -- and not just compared to
8 the going concern value, but also to the orderly winddown
9 value scenario under the plan, it's -- the Chapter 7 process
10 is severely depressed.

11 I think the only real argument that is in the
12 declaration supporting such devaluation of the liquidation
13 analysis is a view that's expressed that a Chapter 7 Trustee
14 whose fiduciary duty it is to maximize value of the estate
15 for the creditors and who's empowered by the Bankruptcy Code
16 to do so would not be able to run a proper sale process of
17 these particular assets. And we intend to probe why the
18 Debtors have arrived at that conclusion throughout this
19 week, Your Honor.

20 THE COURT: You placed zero value on Newco.

21 MR. NOSKOV: I can get to Newco as well, Your
22 Honor. I'm not so sure that we place zero value.

23 THE COURT: What value do you place on Newco?

24 MR. NOSKOV: We -- well, I think the question,
25 Your Honor is whether the Debtors place the correct value --

1 THE COURT: I understand that, but do you place
2 any value on Newco?

3 MR. NOSKOV: Yes, we --

4 THE COURT: What value do you place on Newco?

5 MR. NOSKOV: We think that the value -- that the --
6 - we don't disagree with the inherent value that the Debtors
7 present. We just think it should be severely discounted or
8 discounted at all based on the several risk factors that the
9 Debtors have themselves identified in these cases including
10 in the disclosure statement.

11 THE COURT: So you're not disputing the value they
12 place on it, but you, you believe it should be discounted
13 from the value they placed on it?

14 MR. NOSKOV: I believe the way that they've
15 arrived at the value, which again, will come in through
16 evidence and we will probe exactly how they did so because
17 we think the disclosure has not been sufficient, we believe
18 that that testimony will show that they did not adequately
19 discount it based on risk factors that they have identified
20 themselves and based on how creditors have spoken in
21 choosing their options under the plan.

22 So with that, Your Honor, I think that goes to the
23 Newco value. That has nothing to do with the orderly
24 windown scenario which the Debtors propose, which is a
25 value of \$450 million for the assets, which compared to the

1 liquidation value, which is about 88, is significantly
2 higher and I'm not sure why --

3 THE COURT: But you agree, I take it, that a
4 comparator has to be the liquidation value, not the orderly
5 winddown value, the comparator for the best interest test --

6 MR. NOSKOV: The best interest test should compare
7 what would happen in a Chapter 7, the hypothetical Chapter 7
8 proceeding, versus the winddown value or the plan value,
9 whichever one is more likely. It's a difficult comparison
10 and we'll probe which one is really appropriate, but yes,
11 it's what would happen in a Chapter 7 value, but I don't
12 think that it's appropriate to devalue what would happen in
13 a Chapter 7 by as much as the Debtors have done here. There
14 are tools at the behest of the Chapter 7 Trustee that --

15 THE COURT: May I ask, do you plan to call any
16 witnesses on liquidation value?

17 MR. NOSKOV: We ourselves are not in a position to
18 put in witnesses ourselves. To the extent that the Court
19 would be willing to override the deadlines that have
20 occurred --

21 THE COURT: No, I -- the deadlines are the
22 deadlines, but the deadline for those to submit direct
23 written testimony in opposition to the plan hasn't run yet.

24 MR. NOSKOV: The deadline, I believe, Your Honor,
25 for experts has passed and our client was not in a position

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1 to do so. To the extent that Your Honor suggests we can put
2 in affirmative evidence, we'd be glad to do so.

3 THE COURT: Bear with me a second. The order
4 establishing case management procedures for the confirmation
5 hearing is ECF 3478. In Paragraph 4 on page 3, says, "On or
6 before 12 noon October 11th, 2023, all parties in interest
7 shall file and docket written direct testimony under oath
8 and copies of exhibits that they expect to offer in
9 opposition to confirmation."

10 MR. NOSKOV: Your Honor, that that comes as a
11 surprise to me and if that's the case --

12 THE COURT: It's on the docket. That's been --
13 you know, this order was entered on September 15th because I
14 wanted to be sure everybody knew when they had to put in
15 evidence.

16 MR. NOSKOV: I appreciate you pointing us to that
17 order, Your Honor, and certainly something that we will
18 consider. But my point today is only --

19 THE COURT: Here's what I want to know.

20 MR. NOSKOV: Sure.

21 THE COURT: Do you plan[to offer evidence or
22 simply to cross examine the Debtors' witnesses -- Debtor and
23 the Committee's witnesses?

24 MR. NOSKOV: We certainly intend to cross examine
25 the Debtors' witnesses, Your Honor. Our client, given the

1 situation -- and certainly I can explain what it is --

2 THE COURT: I'm not interested in your client's
3 situation --

4 MR. NOSKOV: -- has not, to this date, been able
5 to -- we, with the client, have not gotten to a point where
6 we can put in evidence affirmatively, but we may, Your
7 Honor.

8 THE COURT: That's fine. You can cross examine
9 their experts, but I just wanted to know -- October 11th was
10 the deadline for anybody in opposition to confirmation to
11 put in written evidence, and I was trying to ascertain
12 whether it's your expectation that you're going to offer
13 evidence by October 11, written evidence.

14 MR. NOSKOV: Your Honor, if I may, may I reserve
15 on that and answer and --

16 THE COURT: Yes. The deadline hasn't come yet.

17 MR. NOSKOV: Thank you very much. Getting back to
18 regardless of affirmative evidence, which we may or may not
19 put forward, we think that on their own, the disclosures
20 that are provided by the Debtors are insufficient to support
21 the analysis that they provided. I think on the one hand,
22 they depress value of a Chapter 7 process which actually
23 Courts have called an orderly winddown just the same as what
24 they're proposing with the orderly winddown scenario.

25 We think that the Chapter 7 Trustee is well within

1 its power to run a sophisticated process and so that
2 discount is much too low. And on the other side of the
3 equation, we think that appropriate discounts have not been
4 applied to the value of the Newco and the other assets that
5 would be, you know, part of the proposed plan.

6 We think that obviously the -- in some sense, the
7 best interest of creditors is mathematical and so once you
8 push one of those values up and one of them down, that the
9 Debtors do not satisfy the test under 1129(a)(7), and
10 therefore the claim should be rejected. And we think that,
11 with just the bare conclusionary assertions that are in the
12 declaration without further backup and without our ability
13 to probe them in cross examination, the Debtors cannot
14 satisfy the test.

15 THE COURT: Thank you.

16 MR. NOSKOV: Thank you.

17 THE COURT: All right. Harrison Schoenau. Is
18 that you, Mr. Kleiner?

19 MR. KLEINER: Yes. Thank you. Thank you, Your
20 Honor. Good afternoon.

21 THE COURT: Go ahead, Mr. Kleiner.

22 MR. KLEINER: Barry Kleiner from Kleinberg,
23 Kaplan, Wolff & Cohen for Harrison Schoenau. I asked the
24 Court for five minutes of time to frame our position and I
25 very much appreciate the opportunity, but I hope to follow

1 Mr. Sabin's lead and he's much less than that.

2 To be clear, we are not objecting to the plan
3 itself. Rather, we filed a limited response objecting
4 solely to approval of the ADR procedures as implemented in
5 the plan and as they apply to avoidance action defendants.
6 We laid out the specific items we objected to in our
7 response that was filed as Docket No. 3529 and the Debtor
8 and Committee (indiscernible). I know that you'll read our
9 objection and the responses, so I just wish to make two
10 points today.

11 First, we are primarily here because the Committee
12 has insisted on retaining the right to (indiscernible) ADR.

13 THE COURT: Say that again? I'm sorry, just
14 repeat that.

15 MR. KLEINER: Yes, so we're primarily here because
16 of the fact that the Committee has retained in the ADR
17 procedures the right to force parties into ADR even if they
18 (indiscernible). As Ms. Kovsky noted, we have been in
19 discussion with them and the Committee, for example, has
20 agreed that parties can't be forced to offer counter, but
21 nonetheless, we're a bit troubled by the insistence that
22 even if they (audio glitch) they're forced to proceed with
23 ADR. We're troubled that that remains a (indiscernible).

24 The other point is, (audio glitch) I want to
25 address, again, as Ms. Kovsky noted, the procedures aren't

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1 yet complete. We have been, since the disclosure statement
2 hearing -- and I don't want to understate this. In fact,
3 the parties have been cooperating in good faith working
4 together. The procedures that were filed in preparation for
5 confirmation differ from those that were filed at the time
6 disclosure statement and much progress has been made, but
7 some items remain open.

8 Since the time we filed the objection and right
9 now, the parties have been in communication and we expect
10 that we'll continue to communicate and hopefully resolve
11 these issues. But as we stand here today, it's not done yet
12 and you don't have in front of you a final (audio glitch)
13 procedures to approve.

14 So we ask two things. One, if Your Honor is to
15 approve ADR (audio glitch), we understand why you might, you
16 don't -- you approve them without the ability to force
17 people who don't think it would be (audio glitch) to
18 participate. And second, since the procedures still remain
19 incomplete, you would delay approval until the parties have
20 had a time to finish it.

21 I would just submit that there's really -- there's
22 no urgency to this particular issue until the effective
23 date. It's not something that has to be done by
24 confirmation. Obviously, we would like to, but really, this
25 is something that's only relevant when the plan is prepared

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1 to go effective because it really deals with claims
2 objections and avoidance actions which have not yet been
3 brought. Thank you.

4 THE COURT: All right, let me just make a couple
5 of comments on that. One, I think I commented earlier,
6 speed it up, because assuming that the plan is confirmed, I
7 don't want to leave issues hanging out there. Okay. This
8 is a little different than some of the other issues, but
9 it's my goal that everything be resolved if the plan is
10 going to be confirmed.

11 Second, I'm not saying that the issues as to which
12 the ADR proceeding -- procedures would apply are identical
13 to the issues I've had in other cases, but I will just tell
14 you, I have in large Chapter 11 cases, I have approved
15 mandatory ADR procedures. You know, the issues here may be
16 a little different. You may have arguments why you don't
17 think it should be mandatory. But I -- in more than one
18 large case, I have approved mandatory ADR procedures. Just
19 saying that.

20 I may -- you know, you or somebody else may be
21 able to persuade me, well, that should -- it should be
22 different here for whatever the reason. Now is not the time
23 to argue it. What I would urge is, and I appreciate you
24 indicated certainly willingness to continue to do this, is
25 try to hammer out these issues in a way that's consensual.

1 Okay?

2 MR. KLEINER: I agree, Your Honor. I think we
3 just didn't quite have enough time --

4 THE COURT: And I understand that. Okay. All
5 right. We have heard all of the opening statements from
6 people who requested openings. The order that I had entered
7 with the order in which, and the time allocation -- and I
8 appreciate that everybody stuck to their time allocations.
9 Very much appreciated.

10 So I wanted to talk -- and anybody who wants to be
11 excused certainly can be. There were issues about how
12 exhibits are going to be handled and I raised this in a
13 prior hearing, just -- I conduct public trials. Sealing or
14 redaction has to be an absolute minimum. And I wanted to
15 cover some of those issues, and I didn't get a chance to
16 look at over the weekend -- trust me, I was working on this
17 -- the sealing motion that was made, so I want to get a
18 better understanding.

19 So let me just make some general points on it and
20 I'm willing to hear argument, and frequently it's the U.S.
21 Trustee who rightfully, in my view, is defending what the
22 Bankruptcy Code creates as the presumption that all these
23 bankruptcy hearings are going to be public. I appreciate
24 that. Okay. There are certain things, from what I've
25 looked at and talked with my clerks about, that I have less

1 problem with that.

2 For example, the Debtor has unresolved litigation
3 claims that it's pursuing. StakeHound, to -- just to name
4 one. I certainly don't think that the Debtor should be
5 obligated to file exhibits on the public -- unredacted
6 exhibits on the public docket that say how they internally
7 have assessed those claims. That's just an example.

8 So yes, there are things that should be redacted.
9 How we deal with it during the hearing is -- also can be an
10 issue. When I've had in other cases in trial where we don't
11 -- where a witness is testifying and involves some redacted
12 documents, we've usually tried to keep the test -- they've
13 been directed, don't talk about the numbers that have been
14 redacted, talk more generally, including a cross
15 examination.

16 So yes, I have dealt with it in the past. So I
17 would like to get a better idea. I guess the thing -- and I
18 said this at the last hearing we had, when I heard that the
19 Debtor was proposing a link on the docket that required
20 people to sign a confidentiality agreement, that was
21 unacceptable to me. So -- but go ahead.

22 MR. McCARRICK: Yes, Your Honor. The amended --

23 THE COURT: -- identify yourself.

24 MR. McCARRICK: I'm sorry. T.J. McCarrick,
25 Kirkland & Ellis, on behalf of the Debtors. The Debtors

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1 filed an amended motion to seal at Docket No. 3644. It
2 supersedes the initial --

3 THE COURT: Okay.

4 MR. McCARRICK: -- request for sealing at Docket
5 No. 3635. We've substantially narrowed the scope of
6 information on the exhibit list that we seek to seal. It's
7 only certain cells on four exhibits and candidly, Your
8 Honor, it's not even clear that those are going to be
9 offered into evidence. So I don't expect this is going to
10 be an issue to your practical point of whether or you'll
11 have to seal the courtroom or how we address it.

12 There are four Excels and there are tabs. So
13 Exhibit 53, it's the Coin Manual Adjustment tab and it cells
14 B15, B17, E15, to E17. For Exhibit 55, it's the Coin Manual
15 Adjustments tab and cells B14 to B16, B101 to B103, E14 to
16 E16, and E101 to E103. For Exhibit 56, again it's the Coin
17 Manual Adjustments tab and it cells B14 to B16, B101 to
18 B103, E14 to E16, and E101 to E103. And finally, it's
19 Exhibit 62, it's the Coin Manual Adjustments tab, the
20 Comments column and the CBP Illustrative Recovery tab, cells
21 K55 to K57.

22 And what we're dealing with here, Your Honor, it's
23 relating to litigation and asset recovery assessments. And
24 so the redactions are pretty slim at this point.

25 THE COURT: Here's what I would ask you to do.

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1 Maybe you've done it already. Confer with the Committee and
2 the U.S. Trustee, and let's see if those parties are in
3 agreement about it, and if they are, then I'm okay with
4 sealing -- or redaction. It's not wholesale sealing, it's
5 redacting certain cells -- subject to further order of the
6 Court so that if evidence develops in a way that I -- that,
7 you know, we have to address it, we'll address it.

8 But if the U.S. Trustee, the Committee and the
9 Debtors agree on these redactions, we go forward on that
10 basis subject to any subsequent Court ruling, which in
11 principle what you describe, I understand the reason for
12 doing that and I'm fine with it, okay. But I want you to
13 have a discussion with the U.S. Trustee about it.

14 MR. McCARRICK: Yes, Your Honor.

15 THE COURT: Because what I found is they're the
16 only ones who really try to protect the public interest and
17 disclosure of what happens. Okay.

18 MR. McCARRICK: That's it, Your Honor.

19 THE COURT: Okay. I guess it was PII and --

20 MR. McCARRICK: Yeah, the --

21 THE COURT: The PII, I think I already said,
22 absolutely should be redacted.

23 MR. McCARRICK: Yes. Just, last, one housekeeping
24 matter. To the extent that the Debtors are going to use
25 demonstratives with any of their exhibits, do you want those

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1 filed 5 p.m. the docket the day before or just use them in
2 Court?

3 THE COURT: I would like them filed before, for
4 this reason. Obviously, we start the evidence tomorrow.
5 The public and the media are not permitted under new
6 guidance from the Administrative Office of the Courts,
7 they're not permitted -- they're only permitted to be in the
8 courtroom or we have an overflow room if we need it, but
9 there are parties in interest who are appearing remotely and
10 so that we don't have any delays. If you're going to use
11 demonstratives, post them the night before so that anybody
12 who wants access to it can see that.

13 Demonstratives typically are not introduced in
14 evidence. They are -- they're illustrative for purposes of
15 testimony and used for that purpose, but it would be helpful
16 if demonstratives are filed the -- you know, by five o'clock
17 the day before they're going to be used.

18 MR. McCARRICK: Yes, Your Honor.

19 THE COURT: Okay? All right. So does anybody
20 else have any other issues either about exhibits or anything
21 else in terms of our procedures that we're going to be
22 following during the trial? Mr. McCarrick, shouldn't have
23 sat down so quickly.

24 MR. McCARRICK: I know. For folks who are
25 appearing virtually who may cross examine using exhibits, I

1 guess I seek the Court's guidance on how that should be
2 handled because the witness may not have a copy. As far as
3 I can tell, there's been no exhibit list disclosed by anyone
4 other than the Committee and the Debtors. That's just the
5 one practical question I have.

6 THE COURT: That's true. I would say this. If
7 anyone who is appearing remotely, any party in interest
8 appearing remotely, who wishes to cross examine any of the
9 witnesses and wishes to use exhibits that are not already
10 marked, they should also post them on the docket by 5 p.m.
11 the day before a witness is testifying. Okay. So there
12 often is an exception for impeachment exhibits, but we're
13 not -- because we're doing this with remote access and --
14 look, I've appreciated, you know, at one point early in this
15 case, we had 786 people on Zoom.

16 And what it is demonstrated to me, is it has
17 really helped with the transparency of the bankruptcy
18 proceeding. If there are people on Zoom who are going to
19 cross examine witnesses, they'll have to, you know, use the
20 raise hand function to be recognized to do that. Obviously,
21 cross examination needs to be limited to the scope of the
22 direct examination that's occurred, but I want to be -- give
23 some leeway to people, particularly nonlawyers in their
24 examination. I certainly reserve the right either to
25 sustain objections that are made or myself limit the cross

1 examination that can be done.

2 But it's a new world with us trying to do --
3 particularly in a case like this where there are so many
4 creditors who are not in the New York metropolitan area who
5 want to appear, and if they wish to cross examine. So, yes,
6 I'm directing that if you're going to appear and cross
7 examine remotely, if you intend to use any exhibits, you're
8 going to need to post them as proposed cross examination
9 exhibits by 5 p.m. the day before a witness testifies, which
10 necessarily is going to require that the parties here who
11 are calling witnesses disclose the day before who the
12 witnesses are going to be for the next day.

13 MR. McCARRICK: Yes, Your Honor. Do you want us
14 to file that on the docket?

15 THE COURT: I think you should, because again,
16 we've got people appearing remotely.

17 MR. McCARRICK: Yes, Your Honor.

18 THE COURT: And I think in response to a question
19 for clarification that the Debtors had asked, if, rather
20 than having to recall witnesses during the opposition case,
21 you know, I'm not going to limit cross examination to the
22 scope of the direct, if someone was planning on calling
23 someone as part of their main case. There's no jury. We'll
24 do it. I want, to the fullest extent possible, that a
25 witness when they testify and they're done, they're done.

1 They don't have to come back. So, okay. Any other
2 questions, Mr. McCarrick?

3 MR. McCARRICK: I can't promise in between here
4 and there, but thank you.

5 THE COURT: Good exercise. Anybody else have any
6 other issues they want to raise about how we're going to be
7 proceeding? Mr. Koenig, who are we going to hear from
8 tomorrow? Well, I picked on you, Mr. Koenig, but if
9 somebody else -- if Mr. McCarrick wants to get up again, he
10 can.

11 MR. McCARRICK: This has been very special for me,
12 yes, Your Honor.

13 THE COURT: I'm sure.

14 MR. McCARRICK: We anticipate tomorrow calling Mr.
15 Ferraro, Mr. Kokinos, potentially Mr. Kielty, Mr. Cohen. I
16 would expect that would --

17 THE COURT: Okay.

18 MR. McCARRICK: -- likely be it. Those are at
19 least four.

20 THE COURT: So my expectation, we're going to
21 start at nine. We'll take a recess. We'll take one break
22 in the morning and then a lunch break and then we'll
23 continue probably until five o'clock is my expectation. My
24 pattern has been that if a witness is almost done for the
25 day, we'll go late. Okay, try -- so they don't have to come

1 back the next morning. Okay?

2 MR. McCARRICK: Thank you again, Your Honor.

3 THE COURT: Go ahead and sit down again, Mr.

4 McCarrick. Anybody have a question for Mr. McCarrick, if we
5 want him to come back. All right. I will see you all in
6 the morning, okay?

7 CLERK: Judge, there's two parties on Zoom that
8 are -- have their hand up.

9 THE COURT: Okay, I didn't see that. Okay.

10 CLERK: Yeah.

11 THE COURT: Yes?

12 MR. KIRSANOV: Good afternoon, Your Honor.
13 Dmitry Kirsanov, pro se creditor. I was not listed on the
14 objections and I have concerns that involve best interest
15 and adverse amendments to the plan after the vote, ballot
16 valuation issues, and continued lack of clarity regarding
17 CEL valuation and custody in Hawaii. I was wondering if I
18 could be heard today.

19 THE COURT: Not in an opening statement. I made
20 clear that the opening statements request had to be filed by
21 the deadlines that I gave. I've heard everyone. I
22 respected the time request that everyone had made. I'm not
23 going to reopen -- this doesn't preclude you -- let me make
24 clear. This does not preclude you from examining witnesses
25 on these issues. The only thing that I did was fix a

1 specific date and time as a deadline for requests for
2 opening statements.

3 So it doesn't preclude you from raising this issue
4 during the trial, cross examining where appropriate, but no
5 more opening statements today.

6 MR. KIRSANOV: Thank you, Your Honor.

7 THE COURT: Okay. Anybody else wish to be heard
8 on Zoom?

9 CLERK: I don't see any additional hands, Judge.

10 THE COURT: Okay. Thank you very much. I'll see
11 everybody in the morning.

12 (Whereupon these proceedings were concluded at
13 4:23 PM)

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1 C E R T I F I C A T I O N

2

3 I, Sonya Ledanski Hyde, certified that the foregoing
4 transcript is a true and accurate record of the proceedings.

5

6 *Sonya M. Ledanski Hyde*

7 Sonya Ledanski Hyde

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25 Date: October 3, 2023

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